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Via Electronic Filing

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Broadband Service Comments - CC Docket Nos. 02-33

Dear Ms. Salas:

Pursuant to the Commission's Public Notice in this proceeding, IP Communications ("IP") hereby provides these comments. Due to resource constraints and because the Commission has implemented a number of related proceedings where IP has already provided specific and detailed comments, for these initial comments IP attaches its prior comments in the prior related proceedings for the convenience of Commission staff and briefly discusses issues relating to the general inquiries within the notice. In IP's reply comments, it is anticipated that more of a point-by-point reply consistent with the sequencing within the NPRM will be prepared.

Positions Previously Presented by IP

As evidenced by IP's attachments to these comments, IP has devoted substantial resources to issues relating to broadband deployment and the necessity for competitive and economic access to facilities. The attached comments, which are incorporated herein as if set forth at length, from related proceedings, most of which have been incorporated into this proceeding are as follows:

- IP's Comments on 5th Notice, dated October 12, 2000;
- IP's Reply Comments on 5th Notice, dated November 14, 2000;
- IP's Comments on 6th Notice, dated February 27, 2001;
- IP's Comments on HiCap Petition, dated June 5, 2001;
- IP's Comments on "Broadband Nondom Petition", dated March 1, 2002;
- IP's Reply Comments on "Broadband Nondom Petition" dated April 1, 2002; and
- IP's Comments on the FCC's Triennial Review dated April 5, 2002.

Conceptual Issues Queried in the NPRM

As stated above, many of the issues addressed in the NPRM have already been addressed by IP in the above-listed comments that have been incorporated herein. However, it is important to address, at least at a high-level, the specific conceptual inquiries as they relate to the classification of high-speed services.

What must be clear is that the treatment of an incumbent local exchange carrier (“ILEC”) Broadband Service as a telecommunications service, information service, or hybrid of the two must be irrelevant to the manner in which Competitive Local Exchange Carriers (“CLEC”) develop consumer services with the network elements they obtain. For example, whether a CLEC utilizes unbundled network elements (“UNEs”) to provide high-speed services for self-provisioned Internet access, third-party Internet access, video functionality, or as part of a wide area network (“WAN”) solution¹, the element itself is utilized by the CLEC to deliver telecommunications services to its end users. Put another way, should the Commission determine that high-speed access when combined with Internet access is something other than a telecommunications service, a conclusion to which IP strongly disagrees, the manner in which the ILEC chooses to bundle its services should not be relevant to a CLEC’s access to elements. Any other result would provide a distorted incentive to ILECs to construct their services and plant in a manner to game the system toward the exclusion of its CLEC competitors. Instead, any actions taken by the ILEC on the retail side or bundled deployment decisions of ILECs must not cloud or distort the unbundling analysis and the necessity for last mile access to end users without regard to the facilities utilized.

Second, the Commission must keep in the front of the analysis just how different high-speed transmission from the end user to the central office is from what the Commission has traditionally considered to be an information service. Information services, such as voice mail, have no relationship to accessing the end user. Instead, information services are generally back office oriented, as was noted in the *Notice*. Quite to the contrary, high-speed consumer access is the new method of providing telecommunications services, rather than being something different. Any other conclusion would fail to recognize that broadband wireline communications is an evolutionary step for the delivery of telecommunications services and would relegate CLECs to the Neanderthal stage of telecommunications.

IP appreciates the opportunity to provide these initial comments including the attached comments previously provided by IP in other proceedings that are incorporated herein as if set forth at length. The unfortunate pattern, as was noted in IP’s attached triennial review comments, has been that as competitors find a means to begin what could lead to effective competition, that means of competition falls subject to an all-out assault

¹ It is important to emphasize that that high-speed services are broader than Internet access. IP, for example, provides high-speed services to develop WAN’s on behalf of its small and medium size business customers over IP’s private ATM network. This example illustrates that there is more to high-speed access than the Internet. And, just because Internet access may be bundled with such a WAN solution does not turn WAN’s over private networks into information services. Similarly, bundling Internet access to a customer’s high-speed telecommunications service does not change the character of that service.

by ILECs. Whether in the context of competition in the form of DSL, or UNE-P before it, this conduct is nothing other than bad faith on the part of ILECs. IP reiterates that this Commission must take a very strong look at these practices by ILECs and make a determination as to what larger remedy is necessary if the ILECs cannot be trusted to be both a competitor and a supplier that values its wholesale customers.

Sincerely,

Howard J. Siegel
Vice President of External Affairs and
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IP Communications

STATE OF TEXAS

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COUNTY OF TRAVIS

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AFFIDAVIT OF HOWARAD SIEGEL
ON BEHALF OF IP COMMUNICATIONS

Before me, the undersigned authority, on this ____ day of April, 2002, personally appeared Howard Siegel, who, upon being duly sworn, states the following:

1. My name is Howard Siegel. I am over the age of 21, of sound mind, and am competent to testify as to the matters stated herein. I am the Vice President of External Affairs and Regulatory Policy for IP Communications ("IP"). I have personal knowledge of the facts contained herein.
2. The facts contained in these comments and related attachments are accurate. Moreover, I have personal knowledge as to this information through the due course of my duties in my capacity as IP's Vice President of External Affairs and Regulatory Policy.

Further Affiant sayeth not.

/s/
Howard Siegel

Sworn to and subscribed to before me this ____ day of April 2002, to certify which witness my hand and seal.

/s/
Notary Public in and for the State of Texas
My Commission expires:_____